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SUBJECT: MALAWI 2009-2010 INCSR PART II, MONEY LAUNDERING AND
FINANCIAL CRIMES

REF: SECSTATE 114960

1. Post is pleased to submit the following responses to the request for information contained in reftel. Post's most recent INCSR report dates from 2007. Accordingly, Post has chosen to reply to the reftel questions. Answers are keyed to reftel paragraph numbers.

2. Post contact for the 2009-2010 INCSR, Part II is Economic / Commercial Officer Daniel N. Daley.

Replies to Questions

3. [ref para 14: Key information needed from all posts is information that fully addresses the following: (1) describe the anti-money laundering/counter-terrorist financing (AML/CFT) plans, programs and timetables adopted by the country; (2) discuss the adequacy of the legal and law enforcement measures taken to combat money laundering and terrorist financing; and (3) identify the accomplishments achieved in accord with those plans, including in particular whether the host country has successfully prosecuted money laundering and/or terrorist financing cases (if so, please provide the number of convictions in 2009 and details of noteworthy cases). If necessary, please provide additional information on these points and please convert any foreign currency figures into U.S. dollars.]

(1) Malawi has enacted the Money Laundering, proceeds of Serious Crime and Terrorist Financing Act 2006(ML Act). There is also a National AML/CFT Committee which helps coordinate various aspects on AML/CFT in the country, including developing an AML/CFT national strategy to run from 2010 to 2015. The strategy has been approved by the Ministry of Finance, and is expected to be launched soon.

The national strategy has 7 key strategic objectives, which include: 1) to develop and consolidate effective AML/CFT legal and regulatory frameworks to fight money laundering and terrorist financing; 2) to develop adequate institutional frameworks and capacity within all key stakeholders to ensure they play their respective roles; 3) to increase awareness of AML/CFT matters, roles and responsibilities by the public and all reporting institutions; 4) to undertake research and assessments of money laundering and terrorist financing risks and vulnerabilities; and 5) to develop and sustain domestic, regional and international cooperation.

(2) The Money Laundering Act addresses all aspects of AML/CFT and is substantially consistent with the FATF 40 plus 9 Special Recommendations. For proper implementation of the ML Act, however, there is need for law enforcement agencies and financial institutions to be trained on AML/CFT matters. Recognizing this need, the FIU has been working with technical assistance providers such as the World Bank to develop the capacity of these agencies so

that they acquire requisite expertise and skills to investigate and prosecute financial crimes. In 2009 the FIU trained 55 individuals in financial analysis to help them in investigating financial crimes, especially money laundering cases.

(3) Achievements in 2009 include:

- * Training 55 officials from Reserve Bank of Malawi, FIU, Anti-Corruption Bureau, National Intelligence Services, Immigration, Malawi Gaming Board, Malawi Police Services on AML/CFT issues;
- * Training financial institutions on their reporting obligations, detection of money laundering, etc;
- * Presentations made to members of Society of Accountants;
- * Started implementing public awareness campaigns through bill-boards, newspaper inserts and brochures;
- * Admission of the FIU to the Egmont Group, which will foster exchange of information necessary for effective analysis of suspicious transactions involving other countries.

The FIU has disseminated reports to various investigative authorities. These cases are still under investigation. Malawi has prosecuted 3 cases in the past year for possession of foreign exchange suspected to have been obtained illegally. The amounts involved for the cases totaled around US\$183,000

14. [ref para 15: Please also provide the names/numbers of relevant laws and regulations related to AML/CFT. We expect that numerous governments have made significant changes in legislation and implementing regulations to establish or strengthen their anti-money laundering regimes, including counter-terrorist financing components, subsequent to the submission of earlier responses to questionnaires developed by the United Nations (UN) or the Financial Action Task Force (FATF). We request that you report on such changes made in 2009 and answer all questions in this cable.

Historical information should be in the 2009 INCSR already, and does not need to be revisited as long as it is accurate.]

- * The country passed the amended Banking Act, Penal code, and Police Act in December 2009. This Act introduced new provisions in line with the ML Act of 2006, empowering the Reserve Bank to take enforcement action against non-compliance with the ML Act and related regulations.

- * The country finalized draft regulations addressing most of deficiencies highlighted by the World Bank in their AML/CFT Evaluation report.

- * The country developed necessary instruments to monitor, detect and confiscate illegal cross-border shipment of currency and bearer negotiable instruments in compliance with FATF Special Recommendation IX. These will be implemented in 2010.

- * The country developed mechanisms for dissemination of the UN Consolidated List (sent to the FIU by the office of UN Ambassador in New York) and US OFAC list (received from FDIC electronically) to financial institutions and other reporting institutions. This helps to ensure that financial institutions don't open accounts or receive funds suspected to be related to terrorist financing.

15. [ref para 16: Please identify any problems that are considered deterrents to more effective host government responses (e.g., absence of laws, lack of political will, resource constraints, corruption, inefficient financial systems, opposition by the financial system or other groups, malfunctioning of the judicial system to prosecute AML/CFT cases, lack of training for effective AML/CFT law enforcement, etc.).]

- * Investigative agencies do not have adequate financial and human resource capacity to carry out effective investigation and successful prosecution of money laundering cases. Investigative agencies have also shown reluctance to seriously tackle the often complex financial cases referred to them by the FIU.

- * The judiciary does not appreciate issues of money laundering sufficiently for them to make appropriate determination on cases that they handle.

16. [ref para 18: Is the jurisdiction considered an important

regional financial center? What is its significance in terms of money laundering?]

Malawi is not a regional financial center.

¶7. [ref para 19: To the extent it is known, is money laundering/terrorist financing primarily related to proceeds from illegal narcotics, psychotropic substances, and chemical precursors? (If applicable, specify drug.) If not, what is/are the major source/s of the proceeds? Also, to the extent known, do the criminal proceeds laundered in the jurisdiction derive primarily from domestic or foreign criminal activity? Are the money laundering proceeds controlled by drug-trafficking organizations, organized crime, or terrorist groups operating locally? What is the extent that public corruption contributes to money laundering/terrorist financing in the host country? If applicable, please provide examples.]

* Malawi has not conducted a systematic assessment of the problem of money laundering in order to determine major sources of proceeds of crime. No other illegal narcotics, psychotropic substances or chemical precursors are known to be used or trafficked in significant quantities.

* Based on media reports, the police have seized cannabis in significant quantities, suggesting that it is a major source of proceeds of crime.

* FIU case reports also indicate that tax evasion is another source of proceeds of crime.

* Reports also indicate that Malawi is used as a transit route by human traffickers.

¶8. [ref para 20: Is there a significant black market for smuggled goods in the country? If so, is there evidence to suggest that it is significantly funded by narcotic proceeds or other illicit proceeds? Does contraband smuggling generate funds that are laundered through the financial system?]

There are a significant amount of smuggled goods on the market, especially pirated tapes, CDs and DVDs. These usually come from

Asia, West Africa and East Africa. There is no evidence that this activity is significantly funded by narcotic proceeds.

¶9. [ref para 21: Does money laundering/terrorist financing occur in the formal financial sector, within an offshore financial center or free trade zone, or in the non-bank financial system (e.g. exchange houses) or via alternative remittance systems, such as hawala, hundi, or other systems? Please note if the country is experiencing an overall increase or decrease in financial crimes.]

No reliable information is available what sectors may be used for money laundering and/or terrorist financing, although the Formal financial sector and the Non-bank financial system are the most probable. Controls through supervision have been put in place in both of these sectors. Malawi's National AML/CFT Committee intends to examine this question as a priority issue. There is no information on increase/decrease trends; this question will also be addressed in the upcoming AML/CFT report.

¶10. [ref para 22: To the post's knowledge, do the jurisdiction's financial institutions engage in currency transactions involving international narcotics trafficking proceeds that include significant amounts of U.S. currency or currency derived from illegal drug sales in the United States or that otherwise significantly affect the United States?]

No; to Post's knowledge Malawi's financial institutions are not engaged in currency transactions involving international narcotics trafficking.

¶11. [ref para 23: Is there any indication that trade-based money laundering occurs in the post's jurisdiction?]

Yes.

¶12. [ref para 24: Is the country considered an offshore financial center?

An offshore financial center is a financial center where attractive financial and corporate services, such as favorable tax treatment or freedom from exchange controls, are provided normally, but not necessarily exclusively, to non-residents. The vulnerability for money laundering is most acute when services include absent and/or relaxed rules on disclosing any information regarding the beneficial owner of legal entities such as trusts or international business companies).]

No; Malawi is not an off-shore financial center and its financial institutions are not allowed to deal with such centers.

¶13. [ref para 25: Are offshore banks, international business companies, or other forms of exempt or shell companies or trusts permitted? If so, how do offshore regulations differ from onshore? For example:]

[a. Does the country license offshore banks and businesses? Does the country adequately perform background checks on applicants for banking and business licenses in its offshore sector? Is a physical presence required, or does the jurisdiction allow shell banks and /or companies?]

Offshore banks are not licensed in Malawi. In addition shell banks are not licensed in Malawi.

[b. Please provide: the numbers of offshore banks; trusts; offshore international business companies, exempt companies, or shell companies; and any other offshore financial services businesses, such as insurance companies, mutual fund companies, trust companies and agents.]

There are none in the Malawi financial sector. The Reserve Bank, which licenses banks, insurance companies etc., undertakes a rigorous assessment of all applications before a license is issued. Other entities such as business companies, legal practitioners, notaries, accountants have been included in the ML Act to ensure they comply with the same anti-money laundering and combating the financing of terrorism obligations. The office of the Registrar of Companies, lawyers and accountants have been trained in AML/CFT to ensure they carry out their work properly.

[c. Are nominee (anonymous) directors and/or trustees allowed?]

Nominee directors or trustees are not allowed in the Malawi financial sector.

¶14. [ref para 26: Please provide the number of offshore casinos or internet gaming sites. Does the jurisdiction license and regulate these sites?]

There are no offshore casinos and internet gaming sites in Malawi. Domestic casinos in Malawi are regulated by the Malawi Gaming Board and the Financial Intelligence Unit.

¶15. [ref para 27: Is there a separate regulatory agency for the

offshore sector, or is the offshore financial center regulated by the onshore regulator? Are regulations governing offshore banks and businesses different in any key respects from regulations governing domestic banks and businesses? If so, how? For example, are offshore financial institutions required to perform customer due diligence and file suspicious activity reports?) If not, what businesses and services are inadequately supervised and regulated?]

There is no offshore sector in Malawi; there is no separate regulatory agency for the offshore sector.

¶16. [ref para 28: Are there free trade zones operating in the jurisdiction? If so, please give the number and name, and briefly describe their operations, capability and function.]

There are no free trade zones (FTZs) operating in Malawi. Nineteen companies operate as export processing zones (EPZs), however. Companies licensed as EPZs are eligible to import inputs duty free (must be bonded) on condition that their entire production is exported.

¶17. [ref para 29: Is there any indication that these FTZs are being used in trade-based money laundering schemes or by the financiers of terrorism?]

Post has no seen indications that the EPZ regime is being used in this way.

¶18. [ref para 30: What types of supervisory programs and/or due diligence procedures are in place to monitor activities in the FTZ zone? Are there identification requirements for companies and individuals who use the zone?]

The Malawi Revenue Authority (MRA) is responsible for supervision of the export processing regime. The MRA monitors imports of bonded inputs and is present when an EPZ company draws down on these goods.

The MRA also certifies the end products and that all EPZ products are exported. Companies must be licensed by the Ministry of Industry and Trade to operate as an EPZ.

¶19. [ref para 31: What laws and regulations exist in relation to AML/CFT? Is money laundering a criminal offense in this jurisdiction? Does the law apply only to drug-related money laundering? Does the jurisdiction list specific crimes as predicate offences or take an "all serious crimes" approach? In some jurisdictions, anti-money laundering laws are applicable to predicate offences defined as "all serious crimes," crimes that carry a threshold minimum sentence in the jurisdiction's penal code. If there is a threshold minimum sentence, what is that threshold? If the country has a "list" approach, what offenses are covered?]

Money laundering is legislated for under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act of 2006 (ML Act). The law is applicable to other types of predicate offences apart from drug related offences. The definition of serious crimes under the ML Act includes all offences for whose punishment is 12 months imprisonment, life imprisonment, or death.

¶20. [ref para 32: Has the country enacted secrecy laws that prevent disclosure of client and ownership information by domestic and offshore financial services companies to bank supervisors and law enforcement authorities?]

No. In addition, the ML act specifically states in Section 44 that the provision of the Act shall effect notwithstanding any obligations to secrecy or other restrictions on disclosure of information.

¶21. [ref para 33: Are bearer shares permitted for banks and/or for companies?]

These are not permitted in any circumstances.

¶22. [ref para 34: Which entities supervise and examine financial institutions for compliance with AML/CFT laws and regulations? What is their capacity to conduct compliance investigations (i.e. are they adequately staffed and trained)?]

According to the ML Act, institutions that had supervisors before the enactment of the ML Act will continue to be supervised by the same supervisors on AML/CFT compliance. Thus, industries such as insurance companies, banks, and forex bureaus will continue to be supervised by the Reserve Bank of Malawi (RBM). The FIU will assume responsibility for supervision of institutions such as estate agents who do not have a supervisor. However it should be noted that the FIU has residual powers to enforce compliance by entering any financial institution and searching records maintained by such financial institution. RBM and FIU staff capable of conducting

compliance investigations, but are limited by human capacity and financial limitations.

¶23. [ref para 35: Are banks and other financial institutions required to know, record, and report the identity of customers engaging in significant transactions, including the recording of large currency transactions at thresholds appropriate to the country's economic situation? What is the statutory threshold?]

Yes, banks are expected to know record and report identity of all their customers. All transactions above 1 million Malawi Kwacha (about USD 6,850) must also be reported to the FIU, under Section 28 of the ML Act.

Stakeholder consultations are currently ongoing in order to determine a threshold below which simplified identification documents will not be required. This will be in line with the policy to promote the use of the financial system by low income bracket of the population.

¶24. [ref para 36: Are banks and other financial institutions required to maintain for an adequate time records necessary to reconstruct significant transactions through financial institutions in order to be able to respond quickly to information requests from appropriate government authorities in narcotics-related or other money laundering or terrorist finance cases? For how long?]

Yes; financial institutions are required to maintain records, in a manner that will allow for the transaction to be reconstructed. The records are to be maintained for at least seven years. This is provided for in Section 27 of the ML Act.

¶25. [ref para 37: Do financial institutions report suspicious transactions? Which ones? Is such reporting mandatory or voluntary? Is reporting required for all suspicious transactions, or is there a threshold amount below which suspicious transaction reports are not required?]

Yes; financial institutions are required to report by mandate, and there are penalties for failing to do so. Financial Institutions are required to submit three kinds of reports: A) suspicious transaction reports, which do not involve any threshold amount, B) large currency transaction reports which are reports on any transaction in cash exceeding the threshold of one million Malawi kwacha, and C) reports on electronic funds transfers, which is not yet operational.

¶26. [ref para 38: Are reporting individuals protected by law with respect to their cooperation with law enforcement entities?]

Yes; reporting individuals are protected. The ML Act makes it crime for any person to reveal that a suspicious transaction report has been filed or that there are other investigations taking place. It is also a crime to reveal the identity of a person who has filed a suspicious transaction report.

¶27. [ref para 39: Are the AML/CFT controls as described in the preceding 5 paragraphs applied to non-bank financial institutions (NBFIs) and designated non-financial businesses and professions (DNFBPs), such as exchange houses, stock brokerages, cash couriers, casinos, dealers in jewels and precious metals, insurance companies, pawn shops, realtors, high-worth dealers in art and vehicles, and to intermediaries, such as lawyers, accountants, notaries, or broker/dealers? Which are subject to the requirements to report suspicious transactions and/or large transactions? Which entities have actually filed such reports?]

Yes; DNFBPs are subject to the same regulations as Financial Institutions. Under the ML Act section 2, DNFBPs are actually defined as financial institutions and are treated as such in term of what is expected from them.

¶28. [ref para 40: Do current laws provide for the establishment and funding of a financial intelligence unit (FIU)?]

An FIU is established under Section 11 (1) of the ML Act, and Section 19 of the same act provides that the FIU should provide its yearly budget to the minister of finance for them to be included in the country's yearly budgets. Since the FIU was established in July 2007, funding has been made without problems.

¶29. [ref para 41: Has the country established an FIU? Is it operational? Is it adequately staffed? To what degree does it have operational and budgetary independence? Where in the government is it housed; e.g., within a finance or national police ministry, or as an independent agency?]

Yes; an FIU has been established. It was formally established in July 2007, but received its first reports in December 2007. Currently the FIU is housed in the Reserve Bank of Malawi (RBM) Building, but has operational independence. The FIU currently has 9 staff members occupying its five departments: Finance and

Administration, Legal and Policy, Compliance and Prevention, Monitoring and Analysis, and ICT. Three additional staff members are expected to start work on 4th January, 2010. The division of staff in the department is as follows,

- * Monitoring and Analysis 3
- * Legal and policy 1
- * Compliance and prevention 1 (to be increased to 3 in 1/2010)
- * ICT Department 1 (to be increased to 2 in 1/2010)
- * Finance and Administration 2

The FIU is currently headed by an Acting Director; a permanent Director has yet to be appointed.

Although the FIU is operationally independent, it is required to make annual reports to the Minister of Finance. This gives a general picture of the work of the FIU.

¶30. [ref para 42: Describe the authorities and functions of the FIU. Is it an administrative body that performs analytical duties? Does it also have criminal investigative and/or regulatory responsibilities?]

Malawi's FIU is an administrative unit, performing only analytical duties. According to the ML Act, the FIU is mandated to request, receive, analyze and disseminate to competent authorities disclosures of financial information as required in order to counter money laundering and financing terrorism. The FIU also has regulatory powers to enforce compliance. It has no investigatory or prosecutorial authority.

¶31. [ref para 43: Does the FIU have access to the records or databases of other government entities or financial institutions? Does it have formal mechanisms in place to share information domestically (with law enforcement/prosecutors) or internationally with other FIUs?]

Yes; the FIU has access to databases of other government institutions; this can be exercised either informally or by means of a memorandum of understanding (MOUs). Informally access involves the FIU simply going to the required office and asking for information. MOUs also exist indicating when and how information is to be exchanged, and how this information can be used. Currently the FIU has MOUs with the Immigration Department and the Reserve Bank of Malawi. The plan is to enter into MOUs with all relevant agencies.

¶32. [ref para 44: How many suspicious transaction reports (STRs) were received in 2009? How many were the subject of investigation or resulted in referrals to law enforcement for investigation?]

Nine (9) STRs were received in 2009, out of which five (5) were disseminated to law enforcement agencies (LEAs).

The FIU also have disseminated to LEAs ten (10) reports stemming from Large Currency Transaction Reports.

The FIU has also received ten (10) requests for information from LEAs, all of which have been responded to.

¶33. [ref para 45: Which government bodies are responsible for investigating financial crimes, including money laundering and terrorist financing? Are they adequately staffed and trained?]

The investigation of money laundering and terrorist financing is done by the Anti-Corruption Bureau, the Malawi Revenue Authority, and the Fiscal and Fraud Police of the Malawi Police Services. Cases will be assigned to a particular agency depending on the nature of the predicate offence. Training has been provided, but agencies still lack experience with financial investigations.

¶34. [ref para 46: Have there been arrests, prosecutions, and convictions for money laundering or terrorist financing since January 1, 2009? How many? Please report highlights of any major cases not previously reported.]

To date there have been no cases.

¶35. [ref para 47: The seizure and forfeiture of assets (including but not limited to bank accounts, other financial assets, airplanes, autos, residences, other property) derived from international drug trade, money laundering, terrorist financing or other serious crimes

can be important elements in efforts to control drug trafficking, money laundering, terrorist financing and organized crime activity. Has the country enacted laws and established systems for identifying, tracing, freezing, seizing, and forfeiting narcotics-related assets as well as assets derived from, or intended for, terrorist financing and other serious crimes? If so, please describe the authority (regulatory or judicial). Are new legislation or changes in current laws, regulations, judicial or administrative authorities being considered?]

Yes. Malawi recognizes the importance of the seizure and forfeiture of assets derived from crime. The ML Act specifically addresses the issues of identifying, tracing, freezing, seizing, and forfeiting property or assets related to any serious crime, which includes money laundering and terrorist financing. Under the Act, the competent authority, the Directorate of Public Prosecutions (DPP) is generally responsible for court applications to freeze or seize assets. However throughout the process, especially where there are terrorist financing funds, the FIU or the RBM can move for freezing of such funds. In addition there is a common law remnant in criminal cases where instruments used in crime can be seized upon a conviction. The Anti-Corruption Bureau (ACB), established under the Corrupt Practices Act as a specialized agency, also has a mandate to freeze property related to commission of corrupt practices related offences. Presently there are no moves to change the law.

¶36. [ref para 48: What are the obstacles or disincentives to enacting such laws, regulations, other authorities?]

Although the ML Act has already been enacted, the concept of anti-money laundering efforts and CFT is fairly new to Malawi. As a result there is a general lack of appreciation of what the issues are, and the need for such legislation. The main challenge is now to put the enacted law in practice, complete with institutional framework and capacity.

¶37. [49. What are the major provisions in current and/or proposed legislation? For example, what assets can be seized? Do they include: instruments of crime such as conveyances used to transport narcotics, property on which illicit crops are grown or are used to support terrorist activity, or intangible property such as bank accounts? Can substitute assets be seized or must a relationship to the crime be proven? Can legitimate businesses be seized if used to launder drug money, support terrorist activity, or are otherwise related to other criminal proceeds?]

Under the ML Act, Corrupt Practices Act, Customs and Excise Act, Police Act and Exchange Control Act, all of the above can be seized and confiscated. Under the ML Act, legitimate business or assets of a legitimate business can be seized if they are involved in money laundering or terrorist financing.

Under ML Act, the court can order payment in other form were tainted property cannot be traced, or has been transferred to a third party, or located outside Malawi, or is commingled with other property that cannot easily be separated.

¶38. [ref para 50: What government entities are responsible for tracing, seizing assets and freezing assets? Is there a period of time ascribed to the action of freezing, after which the assets are released? Are frozen assets confiscated? If yes, by what government entity? Is there an asset forfeiture fund? What entity/s receive/s proceeds from asset seizures and forfeitures? Which agencies manage and have responsibility for seized assets? What is their capacity to manage seized assets?]

The tracing, seizing and freezing of assets falls under the responsibility of the DPP with the assistance of the FIU and the RBM as provided under Section 78 of the ML Act, for the financial institutions which the two entities supervise. Bank accounts/funds can be frozen for an initial period of three months. The ML Act provides for a period of not more than twelve (12) months after conviction during which the competent authority (the DPP) may apply to the courts to have the property confiscated. Other assets can be seized upon conviction or proof that they are

proceeds of crime, or instrumentalities of crime. In both cases the freezing or seizure is subject to review by the court, where the affected persons have a right to be heard. Once that is done the assets can be confiscated. In general under Malawi criminal law, seized assets or confiscated funds are owned by the GOM. Under the ML Act, the Attorney General is mandated to ensure that property finally confiscated is properly transferred or registered as property of the GOM.

There is currently no asset forfeiture fund. Where necessary the court can appoint an administrator to take possession of the property and empower the administrator to sell the property.

¶39. [ref para 51: Does the banking community cooperate with enforcement efforts to trace funds and seize/freeze bank accounts?]

Yes; the banking community does cooperate in the seizure and freezing of assets. The Bankers Association has a robust sub-committee of Compliance Officers with a mandates to foster cooperation amongst the banks to ensure illegal funds do not infiltrate into the system.

¶40. [ref para 52: Does the law allow for civil as well as criminal forfeiture?]

The ML Act allows only for criminal forfeiture, but it does allow for a restraining order in order to ensure that property which may be subject to confiscation is not transferred or otherwise dissipated. This is also possible under the Corrupt Practices Act.

¶41. [ref para 53: Does the government enforce existing asset seizure and forfeiture laws? Does the jurisdiction have adequate police powers and resources to trace, seize and freeze assets? If so, can the jurisdiction freeze assets without undue delay?]

Yes, the Government does enforce the laws. The Anti Corruption Bureau has prosecuted corruption charges, and has confiscated and seized the property of some convicts. The ML Act fairly new, however, and Malawi is still building capacity in this area and does not yet have a fully fledged seizure mechanism. The ML Act is fairly adequate; the FIU is now in place, and all law enforcement agencies such as the DPP, Police, Revenue Authority, Anti-Corruption Bureau, and Immigration have been familiarized in its terms. Enforcement resources to trace, seize and freeze assets are limited, however, and can cause delays.

¶42. [54. Does the government have an independent national system and mechanism for freezing terrorist assets?]

No.

¶43. [ref para 55: What was the dollar amount of narcotics-related, terrorist-related and other criminal-related assets frozen, seized, and/or forfeited in the past year? How does this amount compare to amounts seized / forfeited / frozen in previous years?]

There are currently no statistics available to measure these amounts. Capacity building efforts are being undertaken in relevant agencies such as the Home Affairs - Drugs Enforcement Unit to ensure that statistics are available in the future.

¶44. [ref para 56: Has the country enacted laws for the sharing of seized assets with other governments? Is the government engaged in bilateral or multilateral negotiations with other governments to enhance asset tracing, freezing and seizure?]

Under the ML Act and under the Mutual Legal Assistance Laws, Malawi can enter into agreements both short and long term with Commonwealth and non Commonwealth countries. Under those agreements issues of sharing assets can be specifically provided. The ML law stipulates that Malawi is under an obligation to freeze tainted assets on the request of other countries.

¶45. [ref para 57: Has the jurisdiction criminalized the financing of terrorism as required by the UN International Convention for the Suppression of the Financing of Terrorism and UN Security Council Resolution 1373? If so, please provide title of act, date of enactment, and pertinent details. If the jurisdiction has an "all serious crimes" anti-money laundering law, please indicate if terrorism and terrorist financing are considered serious crimes. If the country has listed the predicate offenses for money laundering, please indicate if terrorism and terrorist financing are on the list.]

Yes, financing of terrorism is criminalized under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act which was passed in August of 2006. The act provides for the seizure of assets suspected to be held for the purpose of terrorist financing. The definition of Serious Crimes includes all crimes for whose punishment is 12 months imprisonment, life imprisonment, or death. Offences include money laundering and terrorist financing.

¶46. [ref para 58: Has the jurisdiction circulated to its financial institutions the list of individuals and entities that have been included on the UN 1267 sanctions committee's consolidated list as being linked to Usama bin Ladin, members of the Al Qa'ida organization or the Taliban? Does the jurisdiction circulate the list of terrorist organizations/financiers that the USG or the European Union (EU) have designated under relevant authorities? Did the jurisdiction identify, freeze, seize, and/or forfeit related assets in 2009? If so, please provide dollar amount.

Yes, Malawi circulates the UN and OFAC list. To date financial institutions have not come across names matching any of the individuals or organizations appearing on these lists.

¶47. [ref para 59: Does the jurisdiction acknowledge the existence and use of value transfer systems outside the formal financial system? Describe the steps the jurisdiction has taken regarding regulating alternative remittance systems, such as hawala or hundi; the exploitation thereof, including black market exchanges; money remitters; trade-based money laundering; cross-border cash smuggling; or the misuse of precious metals and stones.]

Yes, alternative value transfer systems are recognized. These alternative remittance systems are not included in the ML Act. Malawi authorities indicate that (unspecified) plans are under way to ensure they are regulated.

Trade-based money laundering and cross-border cash smuggling are covered by the ML Act.

¶48. [ref para 60: Discuss the efforts the jurisdiction has taken to thwart the misuse of charitable and or non-profit entities that can be used as conduits for the financing of terrorism. For example, is there a government entity that regulates or supervises the sector? If so, please name the entity. Does it monitor the sector for potential terrorist financing abuse? How are overseas financial transactions monitored to prevent potential terrorist financing?]

Malawi has a Non-Governmental Organization (NGO) Board that conducts supervisory oversight of NGOs.

The Council for Non-Governmental Organizations (CONGOMA), a civil society body, has been involved in AML/CFT Training.

The FIU has made presentations to members of CONGOMA on AML/CFT issues.

Neither the NGO Board nor CONGOMA is believed to have any significant capacity to monitor the sector for terrorist financing abuse.

¶49. [ref para 61: Are there statutory requirements for limiting or monitoring the cross-border transportation of currency and monetary instruments? If so, please describe cross-border currency reporting requirements for both inbound and outbound currency, including those that apply to cash couriers, including the monetary threshold that would require a report to be filed. Are mandatory declaration forms used at border crossings?]

The ML Act requires that declarations should be made when transporting currency across the borders, and failure to make such declarations is a crime. Customs and Police officials are responsible for seizing any currency that has not been declared, any currency they suspect to be the proceeds of ML, or that could be used for terrorist financing. The declaration forms are mandatory and are filed with the FIU. The declaration system is yet to be implemented, however. The FIU, the Malawi Revenue Authority, the

RBM, and the Immigration Department have been holding meetings to draft an MOU specifying how the system should work and outlining the roles of the various players.

¶50. [ref para 62: Are cash declaration or smuggling reports entered into a database? Is such data shared between host government agencies, in particular with an existing FIU?]

Currently this does not happen. GOM authorities inform us that plans are underway to have such a system in place, although not implementation date is specified.

¶51. [ref para 63: Has the country adopted laws or regulations that allow for the exchange of records with the United States on investigations and proceedings related to narcotics, all-source money laundering, terrorism and terrorist financing? Has the jurisdiction reached agreement with the United States authorities on a mechanism for exchange of records in connection with such investigations and proceedings? If not, is the country negotiating in good faith with the United States to establish such an exchange mechanism? Does the jurisdiction have similar arrangements with other jurisdictions?]

No such agreement currently exists or is being negotiated between the GOM and the U.S. However Malawi and U.S. can still exchange such information under the international cooperation provisions of multilateral international anti-terrorism and CFT conventions to which both countries are parties.

¶52. [ref para 64: Identify all treaties, agreements, or other mechanisms for information exchange that the host country has entered into with the USG or other countries, including agreements between the FIU and its counterparts, as well as membership in the Egmont group, and those with home country supervisors to facilitate

the exchange of supervisory information regarding banks and trust companies operating in the host country. Describe the status of efforts to update such agreements or arrangements.]

The FIU was admitted to Egmont in May 2009. So far MOUs have been signed with South Africa, Namibia, and United Arab Emirates. Draft MOUs have been sent to Tanzania and Zambia.

¶53. [ref para 65: Has the country cooperated, when requested, with appropriate USG law enforcement agencies and other governments investigating financial crimes related to narcotics, terrorism, terrorist financing and other crimes? If the country has cooperated on important cases with USG agencies, please describe.]

In general the GOM enjoys a friendly and cooperative relationship with the U.S. Post is not aware of any specific USG or other government requests with respect to the crimes listed.

¶54. [ref para 66: Please detail any instances of refusals to cooperate with foreign governments, as well as any actions taken by the USG and any international organization to address such obstacles, including the imposition of sanctions or penalties.]

Post is unaware of any instances of the GOM refusing to cooperate with the USG or other foreign governments in any investigations or enforcements relating to issues covered by this report.

¶55. [ref para 67: Is the country a party to the UN International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the UN Convention Against Transnational Organized Crime (Palermo Convention), the UN Convention Against Corruption, and the UN International Convention for the Suppression of the Financing of Terrorism or other applicable agreements and conventions? If the country ratified or acceded to these conventions in 2009, please provide the date of ratification/accession.]

Vienna Convention: Acceded 12 October 1995;
Palermo Convention: Ratified 17 March 2005;
Convention Against Corruption: Ratified December 4, 2007
Convention for Suppression of Financing of Terrorism: Acceded August 11, 2003.

¶56. [ref para 68: Does the country adhere to relevant international money laundering standards, such as the recommendations of the Financial Action Task Force (FATF)? If so, what steps is it taking to implement the standards? Is it a member of any FATF-style regional body? If not, what, if any, steps is the country taking to become a member of a body or to implement AML/CFT measures?]

Malawi is a member of the East and Southern African Anti-Money Laundering Group (ESAAMLG), a body comprising the Southern African Development Community (SADC) countries plus Uganda and Kenya. ESAAMLG subscribes to the FATF recommendations and encourages its members to do the same. Malawi has enacted the Money Laundering Proceeds of Serious Crime and Terrorist Financing Act, which includes the FATF recommendations. Malawi has also submitted itself to the AML/CFT mutual evaluation process and in this regard, has undergone a mutual evaluation process conducted by the World Bank in March 2008.

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